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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 741

JAMES ANDERSON, ET AL., TRUSTEES OF THE HERMANN HOSPITAL ESTATE, OWNERS OF TRACT NO. AR-108,
Petitioners and Appellants Below,

VERSUS

UNITED STATES OF AMERICA,
Respondent and Appellee Below

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit,

AND BRIEF IN SUPPORT THEREOF

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ALPHA LAW BRIEF CO., HOUSTON

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Summary Statement of the Matter Involved

The facts are simple: Respondent undertook the Addicks Dam project in 1946 and filed a petition in condemnation against petitioners (Record, pp. 7-15). On January 30, 1946, the District Court (upon respondent's application) entered an order granting the government the right to immediate

possession (Record, pp. 15-16). Thereafter, on November 14, 1946, a Declaration of Taking was filed (Record, pp. 19-26), conformably with the Declaration of Taking Statute (40 USCA 258a, et seq.).

The trial court found that the value of the land taken was $227,100.00 on January 30, 1946; and was $261,165.00 on November 14, 1946 (Record, p. 50); and no party has raised any question about the correctness of such findings. The trial court rendered judgment (Record, pp. 49-56), affirmed by the Circuit Court, for petitioners to recover the lesser of these sums.

Jurisdictional Statement

This petition for a writ of certiorari is made on only one point: That the trial court and Circuit Court placed an interpretation on a statute which violates the "just compensation" requirement of the Fifth Amendment.

Question Presented

It is the contention of petitioners (for the reasons set forth in the brief filed in support hereof) that the proper compensation, under the Fifth Amendment, is the value of the land on the date of filing of the Declaration of Taking, rather than on the date of entry of the order granting respondent the right to immediate possession.

Prayer

Petitioners therefore pray that a writ of certiorari issue under the seal of this Court directed to the Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record of the proceedings of the said Circuit Court had in

the case numbered and entitled on its docket, No. 12,628, styled James Anderson, et al., Trustees of Hermann Hospital Estate, owners of Tract No. AR-108, Appellants, versus United States of America, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that, on final hearing, the judgment of the trial court and Circuit Court be reversed in so far as they provide for the amount of compensation to petitioners; and either (a) that judgment be rendered so as to provide that petitioners recover as just compensation, the sum of $261,165.00 together with interest at the rate of six per cent (6%) per annum on $167,000.00 from January 30, 1946, to November 14, 1946, and interest at the same rate on $94,165.00 from January 30, 1946, until the judgment has been paid off and satisfied; or (b) that the cause be remanded to the District Court, with instructions to enter judgment to the same effect;—and for such further relief as to this Court may seem proper.

Dated March 30, 1950.

Respectfully submitted,

John H. Crooker Jr.

JOHN H. CROOKER, JR.,
Attorney for Petitioners

Of Counsel:
FULBRIGHT, CROOKER, FREEMAN & BATES,
Houston, Texas

BRIEF

Opinions of Courts Below

The opinion of the trial court appears at pages 49-56 of the Record; the opinion of the Circuit Court at_____

_____.

Jurisdiction

The date of the judgment to be reviewed is January 10, 1950.

The constitutional provision believed to sustain the jurisdiction of this Court is the Fifth Amendment.

Statement of the Case

The statement in the petition for a writ is hereby adopted and made a part of this brief.

Specifications of Error

1. The Circuit Court erred in affirming the judgment of the trial court providing payment to petitioners (as compensation) only the sum of $227,100.00 plus interest at the legal rate instead of the sum of $261,165.00 plus interest at the legal rate.

2. The Circuit Court erred in failing to reverse the judgment of the trial court and render judgment (on the finding that the land in question had a value of $261,165.00 on November 14, 1946) that petitioners recover of and from respondent the sum of $261,165.00 (plus interest at the legal rate).

Argument

We earnestly contend that the Constitutional provision (Fifth Amendment) for "just compensation" is satisfied ONLY by fixing compensation for title to property taken *as of a time when condemnor is obligated to acquire title as condemnee is obligated to deliver title.*

The law is plain that until there is a deposit of funds in Court, a condemnor may "back out" of acquiring the land. After a Declaration of Taking is filed and money paid into the registry of the Court, the condemnor cannot "back out". Countless decisions recognize this right of a condemnor voluntarily to discontinue or abandon the proceedings until there has been such a *taking of title* (not merely of possession).

It is also clear that, if a condemnor takes possession and retains possession for a time, and then decides to abandon the case and not take title, the landowners would be entitled to be compensated for: (a) the value of the use of the property during the time they were deprived of that use; plus (b) any physical damage inflicted on the property during the time the government retained possession.

But the crux of the whole problem is that until there is a taking of *title*, either (1) by actuality (i.e., physical appropriation of *title*, absent any judicial proceedings); or (2) by payment of the award after final judgment; or (3) by strict compliance with 40 U. S. C. A., Sec. 258a,—no *title* vests in the United States, and no right to *compensation for title* vests in the landowners.

In many cases, the time between the entry of an order granting the right to immediate possession and the filing of a Declaration of Taking, is measured not in *months*, but in *years*. In some of these cases, the land involved has held the possibility of oil development,—and particular mention is

made of this, because mineral values frequently fluctuate both sharply and rapidly. If an offset well on a tract immediately adjacent to land involved in a condemnation suit turns out to be a producing well, the mineral value of the land being condemned would, of course, rise violently; on the other hand, if the offset well turned out to be a dry hole, mineral activity in the entire area might be abandoned and the market value of the mineral estate in the condemned land would drop to a nominal figure.

In reading the opinion in UNITED STATES v. 412.715 ACRES OF LAND IN CONTRA COSTA COUNTY, ET AL., 60 F. Supp. 576, it appears that more than two years and eight months elapsed between the time the government entered possession and the time of the filing of the Declaration of Taking. Certainly, the government does not now contend that (in a case such as the CONTRA COSTA case) it might not, at any stage until the filing of the Declaration of Taking, have abandoned the proceedings and returned the land to the landowners. During all of that time, the arrangement (under the government's contention in this case as to the date as of which value should be fixed) would have been entirely *unilateral:*—the government could abandon at any time it pleased to do so, but the landowner could not do so. If this Court sustains the government's present contention, then if a condemnor found that prices had increased, and wanted to move forward, it could have the value fixed as of a date some two and one-half years before. In such a case, according to the government's present contention, the landowner would be justly compensated for this grossly inequitable arrangement merely by being entitled to compensation for interim use,—possibly in the form of simple interest on the amount ultimately awarded to him. On the other hand, if prices decrease, the case could be dismissed; and the right to condemn not being then exhausted, another suit could

be instituted at a later date with the value fixed as of the later date when possession is taken under an order granted in the second suit (when prices and values would be lower).

Our contention is that no such unilateral arrangement exists. Of course, prices may go up or go down, but the crucial date for fixing the value should (under a proper construction of the Declaration of Taking Act) be the date the Declaration of Taking is filed and the condemnor (by its acquisition of title) is just as irrevocably committed to complete the purchase as the landowner is bound to complete the sale. If the Court please, the only solution which safeguards the landowners' rights under the Fifth Amendment, and prevents a condemning authority from taking advantage of a landowner if it desired to do so, and staying in possession many years under an order granting immediate possession, is for the EFFECTIVE DATE FOR FIXING THE VALUE TO BE THAT DATE UPON WHICH THE CONDEMNOR WILL BE BOUND AS FULLY AS THE CONDEMNEE.

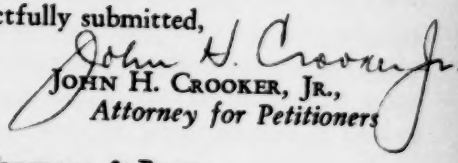
As the activities of the Federal Government expand, this Court of last resort is, and should be, most zealous to safeguard individuals—to adhere strictly to the requirements of the Fifth and Fourteenth Amendments to the Constitution.

We are most sincere in saying that the result which will obtain if the Court follows our contention in this matter will be a just result, regardless of whether prices go up or down between the time the condemnation suit is instituted and the time a Declaration of Taking is filed. First of all, when the law is clearly announced in this respect, a district judge will doubtless not permit the condemning authority to take possession under an order granting immediate possession, without either some time limit in the order granting possession, or comparable assurances from the government that it intends to bind itself within a short time, as completely as the landowner is bound from the time the suit is

filed. Secondly, the landowner is always entitled to be compensated for the interim use of his land between the time possession is taken from him and the time as of which value is fixed; and (whether this compensation be awarded him on a basis of rentals, interest or otherwise), the fact-finder can control, during the trial, the proper measure of compensation to which the landowner is entitled, by virtue of such lapse of time. Any other result would permit the condemning authority to "take the ride" on prices for months, yes, even years, without putting up a penny of money, without being bound to continue with the project or do anything except pay for interim use of the land and any damage physically inflicted upon it in the interim. Sustaining of the government's contention would (under the rulings of some of the trial courts) even prevent the landowner from introducing in evidence any factors affecting the value of the property subsequent to the taking of possession but prior to the time the government became irrevocably committed to acquire title.

In conclusion, we respectfully urge that the only valid interpretation of the statutes on this subject is that for which we now contend,—that the Constitutional provision for "just compensation" is satisfied ONLY by fixing compensation for title to property taken at a time when condemnor acquires title and is obligated to keep title as completely as condemnee is obligated to deliver title.

Respectfully submitted,



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